

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|--|--|------------------------------------|--|
| Investigator: Chris Olmsted | Team: Squad #9 | CCRB Case #: 202200676 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Saturday, 05/30/2020 11:10 PM | Location of Incident: On Pearl Street adjacent to One Police Plaza | Precinct: 01 | 18 Mo. SOL 11/30/2021 | EO SOL 5/4/2022 | |
| Date/Time CV Reported Thu, 02/03/2022 11:47 AM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Thu, 02/03/2022 11:47 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. PO Benjamin Quinn | 03468 | 965831 | 107 PCT |
| 2. PO Michael Avelin | 14107 | 966450 | 107 PCT |
| 3. PO Christopher Lillis | 22969 | 965269 | 079 PCT |
| 4. PO Damani Morgan | 05133 | 967615 | 077 PCT |
| 5. PO Tyler Howe | 14840 | 961822 | M COURT |
| 6. PO Carlos Bello | 12741 | 962946 | 106 PCT |
| 7. PO John Ferguson | 09473 | 966051 | 103 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. PO Jarvis Onabanjo | 20933 | 959010 | SRG 1 |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|--|-----------------------------|
| A. PO Damani Morgan | Abuse: Police Officer Damani Morgan did not obtain medical treatment for § 87(2)(b) | |
| B. PO Christopher Lillis | Abuse: Police Officer Christopher Lillis did not obtain medical treatment for § 87(2)(b) | |
| C. PO Tyler Howe | Abuse: Police Officer Tyler Howe did not obtain medical treatment for § 87(2)(b) | |
| D. PO Michael Avelin | Abuse: Police Officer Michael Avelin did not obtain medical treatment for § 87(2)(b) | |
| E. PO Carlos Bello | Abuse: Police Officer Carlos Bello did not obtain medical treatment for § 87(2)(b) | |
| F. PO Benjamin Quinn | Abuse: Police Officer Benjamin Quinn did not obtain medical treatment for § 87(2)(b) | |
| G. PO John Ferguson | Abuse: Police Officer John Ferguson did not obtain medical treatment for § 87(2)(b) | |

Case Summary

On August 14, 2020, § 87(2)(b) made the allegations in this complaint to the CCRB via the call processing system.

On May 30, 2020, at approximately 11:10 p.m., on Pearl Street adjacent to One Police Plaza in Manhattan, Police Officers Damani Morgan of the 77th Precinct, Christopher Lillis of the 79th Precinct, Tyler Howe of the Manhattan Court Section, Michael Avelin of the 107th Precinct, Benjamin Quinn of the 107th Precinct, Carlos Bello of the 106th Precinct, and John Ferguson of the 103rd Precinct allegedly refused to obtain medical treatment for § 87(2)(b) (**Allegations A-E: Abuse of Authority, § 87(2)(g)**) (**Allegations F & G: Abuse of Authority, § 87(2)(g)**)

§ 87(2)(b) was arrested during this incident. His top charge was resisting arrest. The district attorney declined to prosecute, and the report was sealed. (Board Review [BR] 01)(BR 02) § 87(2)(b) was transported to a hospital during this incident.

The investigation identified material evidence in body-worn camera footage from PO Avelin (BR 03), PO Jarvis Onabanjo of SRG 1 (BR 04), and civilian video (CV1) (BR 05).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Damani Morgan did not obtain medical treatment for § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Christopher Lillis did not obtain medical treatment for § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Tyler Howe did not obtain medical treatment for § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Michael Avelin did not obtain medical treatment for § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Carlos Bello did not obtain medical treatment for § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Benjamin Quinn did not obtain medical treatment for § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer John Ferguson did not obtain medical treatment for § 87(2)(b)

On May 30, 2020, at approximately 9:21 p.m., officers used force to arrest § 87(2)(b) at approximately East First Street and The Bowery in Manhattan while § 87(2)(b) was participating in a protest march. After his arrest, § 87(2)(b) had a visible injury to his right eye socket. The events of § 87(2)(b)'s arrest are the subject of CCRB investigation 202006126. At 9:36 p.m., PO Onabanjo, § 87(2)(b)'s assigned arresting officer, lodged § 87(2)(b) on a prisoner transport bus on The Bowery near East Houston Street. The bus was ultimately filled with other civilians under arrest, several police officers, and at least two corrections officers. At 9:52 p.m., the corrections bus departed from East Houston Street for the Mass Arrest Processing Center (MAPC) at One Police Plaza. It arrived at approximately 10:04 p.m. It is undisputed that by 11:16 p.m., § 87(2)(b) was experiencing a medical incident on the prisoner transport bus and officers were attending to him.

§ 87(2)(b) stated that his memories from the prisoner transport bus were blurry and partial. He recalled being loaded onto the bus and waking up on the sidewalk near the bus and outside MAPC. He was told later by persons who had been on the bus that he had a seizure on the bus for approximately ten minutes. (BR 06)

Civilians § 87(2)(b) were on the prisoner transport bus and provided the following statements to the CCRB:

§ 87(2)(b) recalled § 87(2)(b) and stated he witnessed § 87(2)(b) have a seizure. He stated this occurred before § 87(2)(b) boarded the prisoner transport bus. § 87(2)(b) recalled riding the prisoner transport bus to MAPC and stated it took two and a half hours to get to MAPC from East First Street and The Bowery. § 87(2)(b) stated that once at MAPC, EMTs took § 87(2)(b) to a hospital. Officers returned § 87(2)(b) to the holding cells inside MAPC later that night. § 87(2)(b) could not recall any other details about § 87(2)(b)'s medical incident or the medical treatment § 87(2)(b) received. (BR 07)

§ 87(2)(g) stated he and § 87(2)(g) rode the prisoner transport bus with § 87(2)(b) to MAPC. Multiple officers rode the bus with the civilians to MAPC, but they all exited the bus upon arriving at the facility save one officer who stood near the front of the bus. The bus had individual caged areas near the driver and a few rows of seating in the rear behind a gate the officers locked behind them when they exited the bus. After waiting outside MAPC for 45 to 60 minutes, § 87(2)(g) saw § 87(2)(b) bobbing forward and pulling himself back in his seat. § 87(2)(g) appeared to § 87(2)(g) to be slipping in and out of consciousness. § 87(2)(g) was trying to engage § 87(2)(b) and keep him awake. As § 87(2)(g) spoke to § 87(2)(b) others on the bus noticed § 87(2)(b)'s condition. A woman in a cage at the front of the bus began yelling for an officer's assistance. No officer responded for between five and ten minutes despite the woman calling with increasing intensity. During these five to ten minutes, § 87(2)(b) lost consciousness. After five to ten minutes, a light-skinned Black male with a thin, muscular build and little to no hair responded to the yelling, unlocked the gate to the men's area of the bus, and checked on § 87(2)(b) who began to seize. The officer ran off the bus and returned with more officers. The bus aisle was too narrow for several officers to attend to § 87(2)(b) at once, so the Black male officer dragged § 87(2)(b) out of the bus and began to attend to him on the ground outside. § 87(2)(g) could see the interactions outside his bus window but could not describe the officers involved as he was not wearing his glasses. (BR 08)

§ 87(2)(g) stated he and § 87(2)(g) rode the prisoner transport bus to MAPC with § 87(2)(b) and several police officers. When the bus arrived at MAPC, all but one of the officers who had been on the bus disembarked. One male officer who may have had a tattoo on his upper arm remained on the bus and was locked into the rear area with the male prisoners behind a cage door. While waiting outside MAPC, § 87(2)(b) fainted and then began to have what appeared to § 87(2)(g) to be a seizure. Several passengers screamed at the male officer to get medical attention for § 87(2)(b). After two minutes, the officer checked on § 87(2)(b). The officer then went directly to the front of the bus and began banging on the locked cage door and yelling for the driver to open the cage and come back there. The driver waited approximately three minutes before responding, during which time § 87(2)(b) lost consciousness. § 87(2)(g) could not describe the driver. Once the driver responded, officers partially lifted § 87(2)(b) and dragged him off the bus. They put him on a gurney, loaded him into an ambulance, and drove away. § 87(2)(b) estimated this occurred at 11:30 p.m. (BR 09)

§ 87(2)(b) stated she rode the prisoner transport bus to MAPC with § 87(2)(b) and several police officers. She was already on the bus when officers brought § 87(2)(b) aboard and saw that § 87(2)(b) had a head injury. The bus drove to MAPC and all officers disembarked. Four officers loitered immediately outside the door of the bus, including § 87(2)(b) arresting officer, § 87(2)(b)'s arresting officer, and "§ 87(2)(b)'s" arresting officer. § 87(2)(b) could not describe the officers. After waiting for approximately 90 minutes, at approximately 11:10 p.m., § 87(2)(b) lost consciousness. Multiple individuals began yelling for aid on § 87(2)(b)'s behalf. No officer responded for approximately five minutes. § 87(2)(b) could not see what occurred with § 87(2)(b) after § 87(2)(b) lost consciousness but was able to retrieve a cell phone from a waist pouch and record a video (CV1, discussed below). When officers responded they took § 87(2)(b) off the bus and transported him off scene in an ambulance. § 87(2)(b) could not

describe the officers who participated in taking § 87(2)(b) off of the bus. (BR 10)

§ 87(2)(b) stated he rode the prisoner transport bus to MAPC with § 87(2)(b) and several police officers. He stated that while the bus was driving to MAPC § 87(2)(b) began slurring his words and not making sense. A white, male officer sat next to § 87(2)(b) and spoke with him. For approximately an hour while the bus was in motion, and possibly after it had stopped, civilians on the bus asked the officer to get medical attention for several individuals, including § 87(2)(b). Officers on the bus at first did not respond and later threatened the civilians to stop asking by stating that if they did not they would “get in trouble.” When the bus arrived at One Police Plaza it joined a line of vehicles waiting for access to MAPC. During the waiting period, many officers got off and onto the bus. While waiting outside MAPC, § 87(2)(b) began to slip in and out of consciousness. The white, male officer yelled at § 87(2)(b) and shook him in apparent attempts to keep § 87(2)(b) awake. After ten minutes of this, § 87(2)(b) lost consciousness completely and began to shake. The officer was locked into the back of the bus behind the cage and began yelling for other officers to assist him. No officer responded for approximately five minutes. When officers did respond they took § 87(2)(b) off the bus, an ambulance arrived, and § 87(2)(b) went to a hospital. (BR 11)

NYPD Legal identified no BWC videos that capture what occurred on the bus with § 87(2)(b). The two BWC videos closest to the incident time are footage from PO Avelin’s BWC shot before the incident and footage from PO Onabanjo’s BWC that begins once § 87(2)(b) is on the ground outside the bus. One civilian video, taken by § 87(2)(b) was shot on the bus during the incident.

In PO Avelin’s BWC video, beginning at the 10:53 mark, PO Avelin boards the corrections bus at approximately East Houston Street and The Bowery. § 87(2)(g) and § 87(2)(b) appear on the bus in the footage, as do PO Bello and PO Ferguson. At 17:40, PO Avelin is on the bus when it pulls away from approximately East Houston Street and The Bowery at 9:52 p.m. At 10:04 p.m., the bus appears to stop next to a police vehicle and remains stopped through the end of the recording at 10:21 p.m. (BR 03)

§ 87(2)(b) video is geo-tagged as having been created on Pearl Street adjacent to One Police Plaza at 11:16 p.m. It is 24 seconds long, was recorded on the bus, and captures individuals stating, “medic,” “help him,” and “he’s having a seizure,” while two to three uniformed individuals take unclear actions on the bus. (BR 05)

PO Onabanjo’s BWC video begins at 11:21 p.m. and shows at 00:00 § 87(2)(b) on the pavement outside the bus near One Police Plaza. At 00:28, an officer states, “six minutes out.” At 5:24, an ambulance arrives on scene for § 87(2)(b). (BR 04)

Records from the Mass Arrest Processing Center on May 30, 2020 identify by name and tax ID § 87(2)(b) arresting officer as PO Morgan and § 87(2)(b) arresting officer as PO Lillis. The records identify the only § 87(2)(b) processed at the approximate time of § 87(2)(b)

§ 87(2)(b) Her arresting officer was PO Howe. (BR 12)

The CCRB interviewed PO Morgan, PO Lillis, PO Howe, PO Avelin, PO Avelin’s partner PO Quinn, PO Bello, and PO Onabanjo about this incident. PO Ferguson retired from the NYPD before he could be interviewed. (BR 13)

PO Morgan stated he and approximately three other police officers rode the prisoner transport bus carrying § 87(2)(b) to MAPC. Upon arrival, PO Morgan stayed on the bus for approximately ten minutes, after which he exited and waited outside. To PO Morgan’s recollection, no officers remained on the bus when he exited it. At some point within twenty minutes of PO Morgan exiting the bus, individuals on the bus began yelling out for medical attention. PO Morgan was 20-30 feet away from the bus when he became aware of the yelling, and he saw officers closer to the bus board the bus within three seconds. PO Morgan could not recall how many officers responded or how many officers were closer to the bus when he became aware of the yelling. Two male officers carried § 87(2)(b) off the bus and lay him on his side on the pavement. § 87(2)(b)

was “having a seizure.” Within five minutes an ambulance arrived and took § 87(2)(b) to a hospital. PO Morgan did not involve himself in this incident because when he became aware of the situation, other, closer officers were already responding. (BR 14)

PO Lillis stated he and as many as twelve other police officers rode the prisoner transport bus carrying § 87(2)(b) to MAPC. Approximately 30 to 40 minutes after the bus parked outside MAPC, individuals on the bus began yelling out for medical attention. They had been relatively quiet until that point. PO Lillis was “right outside the door” with two or three officers whose names or biographical details he could not recall. Within a minute, corrections officers who had been on the bus removed the individual § 87(2)(b) from the bus. PO Lillis did not recall whether there were still NYPD officers on the bus at this point but was certain there were at least two corrections officers on the bus. PO Lillis stated there was no delay between when civilians began yelling that § 87(2)(b) needed medical attention and when uniformed individuals responded to § 87(2)(b). PO Lillis never learned the names of the corrections officers on the bus and could not describe them. (BR 15)

PO Howe did not recall this incident. He identified himself in BWC footage from the incident but stated the footage did not help him independently recall what occurred. In the footage in which PO Howe identified himself, PO Howe was not one of the officers interacting with § 87(2)(b) after § 87(2)(b) was carried off the bus. (BR 16)

PO Avelin stated that he, PO Quinn, and approximately five other officers rode the prisoner transport bus to MAPC with § 87(2)(b). When the bus arrived at MAPC they had to wait before disembarking and processing their arrestees. He could not recall for how long they waited. Approximately 25-30 minutes after the bus pulled away from the 1st and Bowery area, PO Avelin heard individuals closer to the front of the bus speaking about someone in need of medical attention. He could not recall at what point in the waiting he became aware of individuals indicating § 87(2)(b) required medical attention. PO Avelin asked PO Quinn to watch over his arrestee and then went directly to § 87(2)(b) who appeared to be passed out. PO Avelin first became aware of § 87(2)(b) at this point. PO Avelin and a uniformed, male individual carried § 87(2)(b) off the bus. PO Avelin did not recall whether the uniformed individual was NYPD, Corrections, or of some other affiliation. He did not recall biographical details about the man. Once § 87(2)(b) was outside, PO Avelin got back onto the bus and had no further interactions with § 87(2)(b). PO Avelin watched his BWC video and identified PO Quinn on the prisoner transport bus. He did not recognize other officers. (BR 17)

PO Quinn stated he rode the prisoner transport bus with § 87(2)(b) and that § 87(2)(b) had a medical incident while en route to MAPC. PO Avelin and a number of officers PO Quinn could not recall rode the bus with him. PO Quinn stated he was in the rear of the bus and separated from the front of the bus, where § 87(2)(b) was, by a locked metal gate. PO Quinn first became aware of § 87(2)(b) when he heard other civilians on the bus calling out for help for § 87(2)(b). PO Quinn could not recall the nature of § 87(2)(b)'s medical event, but stated he believed it to have been a seizure. In response to the incident, PO Quinn and other officers on the bus immediately called for the driver to stop. PO Quinn did not recall whether he was the first officer to respond to the incident. He stated he and other officers responded, “immediately.” The driver continued driving for approximately five blocks before arriving at MAPC, where officers took § 87(2)(b) off the bus. PO Quinn stated that he was locked behind a cage door in the back of the bus when § 87(2)(b) was taken off the bus at MAPC and did not participate in taking § 87(2)(b) off the bus. He could not recall how much time passed between the bus arriving at MAPC and § 87(2)(b) being taken off the bus. He stated it was a matter of minutes, and closer to five minutes than 30 minutes. PO Quinn did not recall who took § 87(2)(b) off the bus. An ambulance arrived and transported § 87(2)(b) to the hospital. PO Quinn did not remember if he ever exited the bus while § 87(2)(b) was on scene, or whether he got off and onto the bus during the incident.

After watching media showing he and § 87(2)(b) were on the same side of the only divider on the bus, PO Quinn stated the metal door visible in the footage is the door to which he

was referring when he stated he was locked in an area separate from § 87(2)(b) when § 87(2)(b) was taken off the bus. PO Quinn stated did not recall whether § 87(2)(b) had been in one of the contained cages or in the open seating area when he had his medical incident. PO Quinn recalled no other details about the incident. (BR 18)

PO Quinn resigned from the NYPD on January 18, 2022. (BR 25)

PO Bello initially did not recall this incident. During his interview he recalled he was on the prisoner transport bus when it got to MAPC and he had to wait on the bus. He recalled that a civilian had a medical incident but could not recall whether he was on the bus when it occurred. Individuals PO Bello could not recall took the civilian off the bus. PO Bello recalled no other details. No video footage refreshed his recollection. (BR 19)

PO Onabanjo stated he did not ride the prisoner transport bus to MAPC with § 87(2)(b). He stated he and other officers escorted the bus to MAPC in a separate vehicle. When they got to MAPC it was busy and both the officers and the bus had to wait. While he was waiting, an officer PO Onabanjo did not know and could not recall approached PO Onabanjo and stated in sum and substance that PO Onabanjo's arrestee might have had a seizure. PO Onabanjo did not recall how long he had been waiting when the other officer approached him. PO Onabanjo ran to § 87(2)(b) and activated his BWC. PO Onabanjo was certain he did not participate in getting § 87(2)(b) off the bus but did not recall whether § 87(2)(b) was already on the ground when PO Onabanjo got to him. (BR 20)

§ 87(2)(g)

§ 87(2)(b)'s recollections about § 87(2)(b)'s medical incident and the medical treatment § 87(2)(b) received were limited and inconsistent with the above video evidence. § 87(2)(g)

PO Onabanjo's testimony is consistent with his BWC footage and no civilian or officer recalled him being involved in this incident before officers began attending to § 87(2)(b). § 87(2)(g)

Civilian and officer testimony concur that § 87(2)(b) exhibited symptoms during his medical incident that would have led a reasonable person, regardless of their medical training or experience, to believe § 87(2)(b) was having a seizure.

Civilian testimony and civilian video evidence concur that multiple individuals on the bus screamed consistently while § 87(2)(b) experienced his medical incident.

On May 30, 2020, **Patrol Guide Procedure 221-02** stated that after any members of service use force against a subject, all members of service must "if the subject is injured or ill, ensure subject receives proper medical attention" and "ensure [the] subject receives immediate medical attention and provide first aid, if appropriate and properly trained, if [the] subject is having difficulty breathing or demonstrates any potentially life-threatening symptoms or injuries." (BR 21)

The CCRB interviewed five civilians and five officers who stated they rode with § 87(2)(b) to the Mass Arrest Processing Center on May 30, 2020. Officers and civilians concur that § 87(2)(b) rode the bus, experienced a medical incident, and ultimately received medical treatment. § 87(2)(g)

Civilian and Officer CCRB Histories

- This complaint was spun out of CCRB 202006126, which is the first complaint to which § 87(2)(b) has been a party. (BR 22)
- PO Morgan has been a member of service for 2 years and has been named as a subject in

one other CCRB complaint and one other allegation which was not substantiated. § 87(2)(g)

- PO Lillis has been a member of service for 4 years and this is the first CCRB complaint in which he has been named as a subject.
- PO Howe has been a member of service for five years and has been named as a subject in 10 other CCRB complaints and 40 other allegations, of which three were substantiated:
 - 201810683 involved a substantiated allegation of Discourtesy – Word against PO Howe. The board recommended Command Level Instructions and the NYPD imposed Instructions.
 - 201906121 involved a substantiated allegation of Abuse of Authority – Failure to Provide RTKA card against PO Howe. The board recommended Command Level Instructions and the NYPD imposed Instructions.
 - 201909838 involved a substantiated allegation of Abuse of Authority – Search (of person) against PO Howe. The board recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - § 87(2)(g)
- PO Avelin has been a member of service for 3 years and this is the first CCRB complaint in which he has been named as a subject.
- PO Bello has been a member of service for 5 years and has been named as a subject in 3 other CCRB complaints and 4 other allegations, none of which was substantiated.
- PO Quinn is retired.
- PO Ferguson is retired.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming "loss of liberty, emotional distress, physical injuries, including a fractured nose, damage to reputation, and financial loss including medical bills" and seeking \$1,000,000 as redress. § 87(2)(b)
- § 87(2)(b)

Squad No.: 09

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|---------------|----------------------------|-----------------------------------|-------------------|
| Investigator: | <u>Christopher Olmsted</u> | <u>Investigator Chris Olmsted</u> | <u>03/14/2022</u> |
| | Signature | Print Title & Name | Date |

| | | | |
|---------------|---------------------|------------------------|-------------------|
| Squad Leader: | <u>Monique West</u> | <u>IM Monique West</u> | <u>03/15/2022</u> |
| | Signature | Print Title & Name | Date |

| | | | |
|-----------|-----------|--------------------|-------|
| Reviewer: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |